

Application No.: 09/828,444
Attorney Docket No.: 20807-0003

D) AMENDMENTS TO THE DRAWINGS

None.

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E) REMARKS

This Response is filed in response to the Final Office Action dated June 13, 2005.

Upon entry of this Response, claims 44-80 will be pending in the Application.

In the outstanding Office Action, the Examiner rejected claims 44-80 under 35 U.S.C. 103(a) as being unpatentable over Anandan et al. (U.S. Patent Application Publication No. 2002/0062251) in view of Engelke (U.S. Patent No. 6,594,346).

Rejection under 35 U.S.C. 103

The Examiner rejected claims 44-80 under 35 U.S.C. 103(a) as being unpatentable over Anandan et al. (U.S. Patent Application Publication No. 2002/0062251), hereinafter referred to as "Anandan" in view of Engelke (U.S. Patent No. 6,594,346), hereinafter referred to as "Engelke." It is noted that in the outstanding Final Office Action the Examiner has identified Anandan as having a publication number of 2003/0021242, which identification information is believed to be in error based on the information in the Notice of References Cited supplied by the Examiner in the prior Office Action.

Specifically, the Examiner stated that

4 As per claim 44 and 80, Anandan et al teach a system (fig 1) for providing personalized information (*targeted electronic communication*) to a user (*Panel member, 700*) in a commercial establishment, the system comprising at least one database storing information related to a user, a portable display unit operated by a user in a commercial establishment, the portable display unit having a unique identifier, and the portable display unit comprising a transceiver at least one database, a user interface, a display screen, a microprocessor, and at least one program executable by the microprocessor to enable the portable display unit to receive, store, and display information to a user in a commercial establishment; a location tracking system to determine a location of the portable display unit in a commercial establishment, a server computer the server computer being in communication with the location tracking system and the at least one database and the server computer being configured to generate personalized information for a user in a commercial establishment based on the location of the portable display unit and the information related to a user stored in the at least one database, and at least one transceiver in communication with the server computer for transmitting the personalized information generated by the server computer to the portable display unit (see abstract, paragraphs 0003, 0007, 0009, 0011, 0012).

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6013, 6026, 6027, 6028, 6043, 6047, 6048, 6049, 6054, 6062, 6063, 6069). Anandan et al fail to teach an inventive concept of providing a plurality of portable display units for use by a plurality of users in a commercial establishment and activating by a user a portable unit to operate in a commercial establishment by providing identifying information. However, Engelke teaches plurality of users in a commercial establishment and activating by a user a portable unit to operate in a commercial establishment by providing identifying information (see column 4 lines 39-5 lines 47). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify inventive concept of Anandan et al to include Engelke's plurality of users in a commercial establishment and activating by a user a portable unit to operate in a commercial establishment by providing identifying information because this would have ensured on the spot communication between the user and the commercial establishment.

Applicants respectfully traverse the rejection of claims 44-80 under 35 U.S.C. § 103(a).

Anandan, as understood, is directed to a system and method for conducting consumer research and marketing using wireless technologies. The system for communicating with a consumer includes a wireless identification device associated with the consumer at a premises, a wireless identification device detector to communicate with the wireless identification device, a first computer in communication with the wireless identification device detector for identifying the consumer associated with the wireless identification device, a wireless reception device associated with the consumer, and a second computer in communication with the first computer, for transmitting a message to the wireless reception device, the content of the message being responsive to the premises' identity or responsive to the premises' contents. The message to the consumer includes prompts to elicit information from the consumer relating to the premises, a customer satisfaction survey, a product promotion, a link to an Internet page, alphanumeric text, or a voice message.

Engelke, as understood, is directed to a system to assist telephone communications by those persons who are deaf, hard of hearing, or otherwise have impaired hearing capability. A relay system is provided to facilitate the translation of information and communication between deaf and hearing persons that includes a call assistant who re-voices the words of the hearing person which are spoken to the call assistant. The words spoken by the call assistant are recognized by a speech recognition computer program which has been trained to the voice pattern of the call assistant, such that the words are promptly translated into text and formatted

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into a high speed digital communication protocol. That high speed digital communication message is then transmitted electronically by telephone to a visual display accessible to the deaf person. The visual display can be a small hand-held personal interpreter which enables on the spot communications between deaf persons and hearing persons wherever the deaf persons might go.

In contrast, independent claim 44 recites a system for providing personalized information to a user in a commercial establishment, the system comprising: at least one database storing information related to a user; a plurality of portable display units located in a commercial establishment for use by a plurality of users in a commercial establishment, each portable display unit of the plurality of portable display units having a unique identifier, and each portable display unit comprising a transceiver, a memory device, a user interface, a display screen, a microprocessor, and at least one program executable by the microprocessor to enable receiving, storing and displaying of information to a user in a commercial establishment, wherein a user activates a portable display unit of the plurality of portable display units to operate in a commercial establishment by providing identifying information; a location tracking system to determine a location of the activated portable display unit in a commercial establishment; a server computer, the server computer being in communication with the location tracking system and the at least one database and the server computer being configured to generate personalized information for a user in a commercial establishment based on the location of the activated portable display unit and the information related to a user stored in the at least one database; and at least one transceiver in communication with the server computer for transmitting the personalized information generated by the server computer to the activated portable display unit.

Independent claim 68 recites a method of providing personalized information to a user in a commercial establishment, comprising the steps of: providing a plurality of portable display units for use by a plurality of users in a commercial establishment; storing information related to a user in at least one database; activating, by a user, a portable display unit of the plurality of portable display units to operate in a commercial establishment by providing identifying information; determining a location of a user in a commercial establishment with a location tracking system; generating personalized information for a user in a commercial establishment based on the location of a user in a commercial establishment and the information related to a

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user stored in the at least one database; and transmitting the generated personalized information to the portable display unit operated by a user in a commercial establishment, the portable display unit having a transceiver, a memory device, a user interface, a display screen, a microprocessor, and at least one program executable by the microprocessor to enable the portable display unit to receive, store, and display the personalized information to a user in a commercial establishment.

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

See Manual of Patent Examining Procedure, 8th Edition, Revision 2 (MPEP), § 2143.03.

Several of the features recited by Applicant in independent claims 44 and 68 are not taught or suggested by Anandan, Engelke or their combination. First, Anandan and/or Engelke do not teach or suggest a plurality of portable display units located in a commercial establishment for use by a plurality of users as recited in independent claims 44 and 68. The system in Anandan either provides the consumer with a personal device having an affixed tag in advance of the consumer entering the store (See Anandan, paragraph 0031) or attaches the tag to the consumer's own personal wireless device. See Anandan, paragraphs 0044 and 0045. The system in Engelke requires each user to have their own personal device with them before entering the store. See Engelke, column 4, lines 44-48. In fact, neither Anandan or Engelke has a need for a plurality of portable display devices in a commercial establishment because each user in Anandan or Engelke already has a personal device before entering the commercial establishment. Thus, to summarize, the systems in Anandan and/or Engelke each require the user of the system to have their own personal device and do not disclose a plurality of portable display units in a commercial establishment for use by a plurality of users as recited by Applicant in independent claims 44 and 68. Furthermore, while the Examiner has acknowledged that Anandan does not teach this limitation in the outstanding Final Office Action (See Final Office Action, page 3, lines 14-17), the Examiner has failed to identify any specific passage in Engelke that allegedly teaches or suggest this limitation. The Examiner has asserted that column 4, line

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39 to column 5, line 47 of Engelke discloses a plurality of portable display units in a commercial establishment for use by a plurality of users as recited by Applicant. However, Applicant has identified no such teaching in the cited passage, or elsewhere, in Engelke and submits that Engelke does not teach this limitation for the reasons discussed in detail above. The Examiner is requested to identify the particular passage(s) in Engelke that teach or suggest this limitation.

Therefore, since Anandan and/or Engelke do not disclose a plurality of portable display units located in a commercial establishment for use by a plurality of users, Applicant submits that Anandan and/or Engelke cannot render unpatentable Applicant's independent claims 44 and 68.

Next, Anandan and/or Engelke do not teach or suggest that a user activates a portable display unit of the plurality of portable display units to operate in a commercial establishment by providing identifying information as recited by Applicant in independent claims 44 and 68. The system in Anandan does not disclose a user activating the personal device and clearly does not disclose the user activating a personal device by providing personal information. The system in Anandan is able to identify the user by the tag that has been attached to the user's personal device. See Anandan, paragraphs 0045 and 0046. As such, the system in Anandan does not have any need to activate a personal device by providing identifying information as recited by Applicant because the tag attached to the user's personal device in Anandan is able to identify the user. The system in Engelke does discuss the need for the user to activate the personal device, but Engelke does not disclose that the user activates the device by providing identifying information. The system in Engelke can be activated by pressing a start button without the need for providing any identifying information. See Engelke, column 4, lines 45-48. Furthermore, the Examiner has failed to identify any specific passage in Engelke that allegedly teaches or suggest this limitation. The Examiner has asserted that column 4, line 39 to column 5, line 47 of Engelke discloses that a user activates a portable display unit of the plurality of portable display units to operate in a commercial establishment by providing identifying information as recited by Applicant. However, Applicant has identified no such teaching in the cited passage, or elsewhere, in Engelke and submits that Engelke does not teach this limitation for the reasons discussed above. The Examiner is requested to identify the particular passage(s) in Engelke that teach or suggest this limitation.

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Therefore, since Anandan and/or Engelke do not disclose that a user activates a portable display unit of the plurality of portable display units to operate in a commercial establishment by providing identifying information, Applicant submits that Anandan and Engelke cannot render unpatentable Applicant's independent claims 44 and 68.

In addition, Applicant respectfully submits that the Examiner has improperly combined Anandan and Engelke. The Examiner has provided no teaching or suggestion in Anandan that would indicate the desirability of incorporating into Anandan the personal interpreter of Engelke, nor has the Examiner cited any passage in Engelke that would indicate that the personal interpreter can be used in the device of Anandan. The Examiner makes a statement that one would be motivated to make the modification to ensure "on the spot communication between the user and the commercial establishment." However, the Examiner provides no support for this conclusion in either Anandan or Engelke. Furthermore, Applicant submits that the Examiner has already asserted that Anandan discusses this feature (See Final Office Action, page 3, lines 11-13), thus there would be no need to make the proposed combination as Anandan already has the feature to be added by the proposed combination with Engelke. Thus, Applicant respectfully submits that the Examiner has improperly combined Anandan and Engelke based on the teachings in Applicant's specification, which is impermissible hindsight reasoning by the Examiner. Applicant would like to point out to the Examiner that:

In making the assessment of differences, section 103 specifically requires consideration of the claimed invention "as a whole." Inventions typically are new combinations of existing principles or features. *Env'l. Designs, Ltd. v. Union Oil Co.*, 713 F.2d 693, 698 [218 USPQ 865] (Fed. Cir. 1983) (noting that "virtually all [inventions] are combinations of old elements."). The "as a whole" instruction in title 35 prevents evaluation of the invention part by part. Without this important requirement, an obviousness assessment might break an invention into its component parts (A + B + C), then find a prior art reference containing A, another containing B, and another containing C, and on that basis alone declare the invention obvious. This form of hindsight reasoning, using the invention as a roadmap to find its prior art components, would discount the value of combining various existing features or principles in a new way to achieve a new result - often the very definition of invention.

Section 103 precludes this hindsight discounting of the value of new combinations by requiring assessment of the invention as a whole. This court has provided further assurance of an "as a whole" assessment of the invention under §103 by requiring a showing that an artisan of ordinary skill in the art at the time

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of invention, confronted by the same problems as the inventor and with no knowledge of the claimed invention, would select the various elements from the prior art and combine them in the claimed manner. In other words, the examiner or court must show some suggestion or motivation, before the invention itself, to make the new combination. See *In re Roussel*, 149 F.3d 1350, 1355-56 [47 USPQ2d 1453] (Fed. Cir. 1998).

Ruiz v. A.B. Chance Co., 357 F.3d 1270, 1276, 69 USPQ2d 1686, 1690 (Fed. Cir. 2004)

Finally, Applicant submits that Engelke is non-analogous art with respect to Applicant's invention as recited in independent claims 44 and 68. As discussed above, Engelke is directed to the translation of information and communication between deaf and hearing persons. In contrast, Applicant's invention as recited in independent claims 44 and 68 is directed to a system and method for providing personalized information to a user in a commercial establishment. Applicant submits that one skilled in the art of providing personalized information to a user in a commercial establishment would not look to a reference directed to the translation of information and communication between deaf and hearing persons to solve problems in the providing personalized information to a user in a commercial establishment field. In addition, the Examiner has cited no passage in Engelke that would indicate that the translation of information and communication between deaf and hearing persons in Engelke would be suitable for use with providing personalized information to a user in a commercial establishment. Thus, Applicant submits that the Examiner has improperly combined Anandan and Engelke and as such Anandan and Engelke cannot be used to reject claims 44 and 68.

"In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. (citations omitted)." See MPEP § 2141.01(a). In this case, Engelke is not in the same field endeavor as Applicant's invention nor is Engelke reasonably pertinent to the particular problems with which the inventor was concerned. As discussed above, Applicant submits that one skilled in the art of providing personalized information to a user in a commercial establishment would not look to a reference directed to the translation of information and communication between deaf and hearing persons to solve problems in the providing personalized information to a user in a commercial establishment field.

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Therefore, for the reasons given above, independent claims 44 and 68 are believed to be distinguishable from Anandan and/or Engelke and therefore are not anticipated nor rendered obvious by Anandan and/or Engelke.

Dependent claims 45-67 and 69-80 are believed to be allowable as depending from what are believed to be allowable independent claims 44 and 68 for the reasons given above. In addition, claims 45-67 and 69-80 recite further limitations that distinguish over the applied art.

For the reasons provided below, it is submitted that at least several of claims 45-67 and 69-80 recite further limitations that distinguish over the applied art.

Claim 45 recites that the portable display unit comprises a user identification system to determine an identity of a user operating the portable display unit. Anandan, as understood by Applicant, does not teach or suggest this limitation and, as discussed above, does not have any need for such functionality. The Examiner alleges that Anandan teaches or suggests this limitation at the abstract and paragraphs 0003, 0007, 0009, 0011, 0012, 0013, 0026, 0027, 0028, 0035, 0037, 0041, 0043, 0044, 0062, 0065 and 0069. However, Applicant cannot identify any description or discussion in the Examiner's cited passages that relates to the limitation and requests that the Examiner specifically identify the passage in Anandan that the Examiner believes teaches the limitation. Furthermore, there is nothing in Engelke that teaches or suggests the limitations not taught or suggested by Anandan.

Claims 47 and 72 recite that the user identification system comprises a substrate reader, and reading a loyalty card of a user with a personal display unit, respectively. Anandan, as understood by Applicant, does not teach or suggest these limitations and does not discuss any such functionality. The Examiner alleges that Anandan teaches or suggests this limitation at paragraphs 0032 and 0033. However, Applicant cannot identify any description or discussion in the Examiner's cited passages that relates to the limitation and requests that the Examiner specifically identify the passage in Anandan that the Examiner believes teaches the limitation. Furthermore, there is nothing in Engelke that teaches or suggests the limitations not taught or suggested by Anandan.

Claims 48 and 73 recite that the user identification system includes the user interface of the portable display unit, and entering, by a user, a personal identification number and associated password into the portable display unit, respectively. Anandan, as understood by Applicant,

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does not teach or suggest these limitations and does not discuss any such functionality. The Examiner alleges that Anandan teaches or suggests this limitation at the abstract and paragraphs 0003, 0007, 0009, 0011, 0012, 0013, 0026, 0027, 0028, 0035, 0037, 0041, 0043, 0044, 0062, 0065 and 0069. However, Applicant cannot identify any description or discussion in the Examiner's cited passages that relates to the limitation and requests that the Examiner specifically identify the passage in Anandan that the Examiner believes teaches the limitation. Furthermore, there is nothing in Engelke that teaches or suggests the limitations not taught or suggested by Anandan.

Claims 49 and 76 recite that the personalized information includes a personalized shopping list, and transmitting a personalized shopping list, respectively. Anandan, as understood by Applicant, does not teach or suggest these limitations and does not discuss any such functionality. The Examiner alleges that Anandan teaches or suggests this limitation at the abstract and paragraphs 0003, 0007, 0009, 0011, 0012, 0013, 0026, 0027, 0028, 0035, 0037, 0041, 0043, 0044, 0062, 0065 and 0069. However, Applicant cannot identify any description or discussion in the Examiner's cited passages that relates to the limitation and requests that the Examiner specifically identify the passage in Anandan that the Examiner believes teaches the limitation. Furthermore, there is nothing in Engelke that teaches or suggests the limitations not taught or suggested by Anandan.

Claims 50 and 77 recite that the personalized information further includes information on products on the personalized shopping list that are located in proximity to the location of the portable display unit, and transmitting information on products on the personalized shopping list that are located in proximity to the location of the portable display unit, respectively. Anandan, as understood by Applicant, does not teach or suggest these limitations and does not discuss any such functionality. The Examiner alleges that Anandan teaches or suggests this limitation at paragraphs 0032 and 0033. However, Applicant cannot identify any description or discussion in the Examiner's cited passages that relates to the limitation and requests that the Examiner specifically identify the passage in Anandan that the Examiner believes teaches the limitation. Furthermore, there is nothing in Engelke that teaches or suggests the limitations not taught or suggested by Anandan.

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Claims 56 and 70 recite calculating the location of the portable display unit in a commercial establishment by at least one of biangulation techniques or triangulation techniques. Anandan, as understood by Applicant, does not teach or suggest these limitations and does not discuss any such functionality. The Examiner alleges that Anandan teaches or suggests this limitation at the abstract and paragraphs 0003, 0007, 0009, 0011, 0012, 0013, 0026, 0027, 0028, 0035, 0037, 0041, 0043, 0044, 0062, 0065 and 0069. However, Applicant cannot identify any description or discussion in the Examiner's cited passages that relates to the limitation and requests that the Examiner specifically identify the passage in Anandan that the Examiner believes teaches the limitation. Furthermore, there is nothing in Engelke that teaches or suggests the limitations not taught or suggested by Anandan.

Claim 58 recites that the unique identifier of the portable display unit includes an infrared identification signal. Anandan, as understood by Applicant, does not teach or suggest these limitations and does not discuss any such functionality. The Examiner alleges that Anandan teaches or suggests this limitation at the abstract and paragraphs 0003, 0007, 0009, 0011, 0012, 0013, 0026, 0027, 0028, 0035, 0037, 0041, 0043, 0044, 0062, 0065 and 0069. However, Applicant cannot identify any description or discussion in the Examiner's cited passages that relates to the limitation and requests that the Examiner specifically identify the passage in Anandan that the Examiner believes teaches the limitation. Furthermore, there is nothing in Engelke that teaches or suggests the limitations not taught or suggested by Anandan.

Claim 62 recites that the portable display unit comprises a scanning device and the scanning device is configured to read product barcodes scanned by the identified user. Anandan, as understood by Applicant, does not teach or suggest these limitations and does not discuss any such functionality. The Examiner alleges that Anandan teaches or suggests this limitation at the abstract and paragraphs 0003, 0007, 0009, 0011, 0012, 0013, 0026, 0027, 0028, 0035, 0037, 0041, 0043, 0044, 0062, 0065 and 0069. However, Applicant cannot identify any description or discussion in the Examiner's cited passages that relates to the limitation and requests that the Examiner specifically identify the passage in Anandan that the Examiner believes teaches the limitation. Furthermore, there is nothing in Engelke that teaches or suggests the limitations not taught or suggested by Anandan.

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Claims 65 and 80 recite transmitting the personalized information to the portable display unit as a web page using hypertext markup language. Anandan, as understood by Applicant, does not teach or suggest these limitations and does not discuss any such functionality. The Examiner alleges that Anandan teaches or suggests this limitation at the abstract and paragraphs 0003, 0007, 0009, 0011, 0012, 0013, 0026, 0027, 0028, 0035, 0037, 0041, 0043, 0044, 0062, 0065 and 0069. However, Applicant cannot identify any description or discussion in the Examiner's cited passages that relates to the limitation and requests that the Examiner specifically identify the passage in Anandan that the Examiner believes teaches the limitation. Furthermore, there is nothing in Engelke that teaches or suggests the limitations not taught or suggested by Anandan.

Claim 66 recites that the server computer is configured to permit a user to access the Internet using the portable display unit. Anandan, as understood by Applicant, does not teach or suggest these limitations and does not discuss any such functionality. The Examiner alleges that Anandan teaches or suggests this limitation at the abstract and paragraphs 0003, 0007, 0009, 0011, 0012, 0013, 0026, 0027, 0028, 0035, 0037, 0041, 0043, 0044, 0062, 0065 and 0069. However, Applicant cannot identify any description or discussion in the Examiner's cited passages that relates to the limitation and requests that the Examiner specifically identify the passage in Anandan that the Examiner believes teaches the limitation. Furthermore, there is nothing in Engelke that teaches or suggests the limitations not taught or suggested by Anandan.

In conclusion, it is respectfully submitted that claims 44-80 are not anticipated nor rendered obvious by Anandan and/or Engelke and are therefore allowable.

CONCLUSION

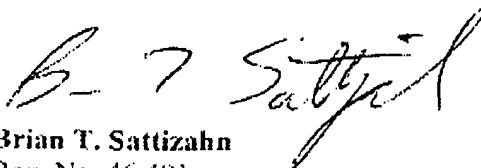
In view of the above, Applicant respectfully requests reconsideration of the Application and withdrawal of the outstanding rejections. As a result of the amendments and remarks presented herein, Applicant respectfully submits that claims 44-80 are not anticipated by nor rendered obvious by Anandan, Engelke or their combination and thus, are in condition for allowance. As the claims are not anticipated by nor rendered obvious in view of the applied art, Applicant requests allowance of claims 44-80 in a timely manner. If the Examiner believes that prosecution of this Application could be expedited by a telephone conference, the Examiner is encouraged to contact the Applicant.

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The Commissioner is hereby authorized to charge any additional fees and credit any overpayments to Deposit Account No. 50-1059.

Respectfully submitted,
MCNEES, WALLACE & NURICK

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Dated: September 13, 2005

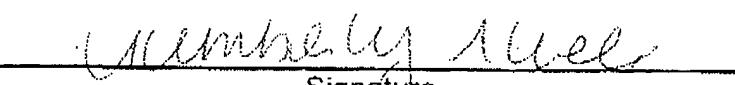
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Attorney Docket No.: 20807-0003-01
Application No.: 09/828,444 Filed: April 6, 2001

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